



Federal Communications Commission
Washington, D.C. 20554

December 20, 2006

By Facsimile and First-Class Mail

John D. Logan
Southern Communications Services Inc.
d/b/a SouthernLINC
600 University Park (Suite 400)
Birmingham, AL 35209

DA 06-2558

Re: Request for Waiver and Extension of 800 MHz SMR Construction Requirements, Southern Communications Services Inc. (d/b/a SouthernLINC), FCC File No. 0002535203

Dear Mr. Logan:

This letter addresses the above-captioned Request for Waiver and Extension of 800 MHz Specialized Mobile Radio (SMR) Construction Requirements (Waiver Request), filed by Southern Communications Services Inc., d/b/a SouthernLINC, (Southern) on March 20, 2006, seeking waiver of the construction requirements in Section 90.685 of the Commission's rules¹ as they apply to Southern's 800 MHz SMR U-block Atlanta economic area (EA) license (U-block license).² Specifically, Southern requests an extension of time to construct until the completion of the 800 MHz band reconfiguration for Wave 3 or alternatively, until the completion of the 800 MHz band reconfiguration within all of the National Public Safety Planning Advisory Committee (NPSPAC) Region(s) covered by its U-block license.³ As discussed below, we grant Southern's alternative Waiver Request.

The Commission may grant 800 MHz SMR EA licenses for ten-year terms,⁴ but those licenses also have construction requirements that must be satisfied within five years of the initial license grant. Specifically, within three years of license grant, a licensee must construct and place into operation enough base stations to provide coverage to at least one-third of the population of the licensed area; and within five years of license grant, the licensee must provide coverage to two-thirds of the licensed area population. EA licensees may, in the alternative, provide substantial service to their markets within five years of the initial grant of their license.⁵ Failure to meet these construction requirements results in forfeiture of the entire EA license.⁶

The Commission granted Southern its U-block license on March 21, 2001, with a five-year construction deadline of March 21, 2006. In March 2002, the Commission initiated a rule making proceeding to respond to growing concern that cellular-architecture 800 MHz land mobile, and 800 MHz cellular systems were causing interference to public safety and other 800 MHz licensees using "high-site"

¹ 47 C.F.R. § 90.685.

² See File No. 0002535203 (Waiver Request). The call sign of the U-block license is WPSA361.

³ *Id.* at 1. Southern's U-block license encompasses portions of NPSPAC Region 10 (Georgia); Region 1 (Alabama); and Region 31 (North Carolina).

⁴ 47 C.F.R. § 90.685(a).

⁵ 47 C.F.R. § 90.685(b). For purposes of Section 90.685, "substantial service" is defined as "service which is sound, favorable, and substantially above a level of mediocre service." *Id.*

⁶ 47 C.F.R. § 90.685(d).

architecture.⁷ To resolve the problem, cellular architecture and high-site architecture systems are being spectrally segregated in the 800 MHz band.⁸ This “rebanding” requires some 800 MHz incumbents to modify their systems to operate on replacement channels specified by the 800 MHz Transition Administrator (TA).

The Commission, in the *Rebanding Report and Order*, envisioned a situation where a licensee would face both a pending construction deadline and pending relocation. Specifically, the Commission stated that, because the 800 MHz rebanding will occur incrementally in fifty-one geographic “NPSPAC” regions,

“[s]ome incumbent 800 MHz licensees may face construction deadlines prior to their being scheduled for relocation. To resolve this issue we will allow licensees which are ready to construct and waiting only for assignment of their new channel to submit a waiver request demonstrating that they have commenced construction, *e.g.*, have on hand, or have placed a firm order for, non-frequency sensitive equipment, have erected a tower, obtained a commitment for tower space, etc.”⁹

Further, the Commission stated that an incumbent licensee may seek extension “of the construction period until (a) six months after the TA has specified a channel or channels if that channel or those channels can be used in advance of band reconfiguration in the region, without causing interference; or (b) if its (newly-assigned) channel(s) cannot be activated without interference to other systems, then, six months measured from the date band reconfiguration is completed in the relevant NPSPAC region(s).” The Commission also stated that its waiver rules will apply and that any waiver request will be evaluated particularly on how well the licensee establishes “good cause” for granting such a waiver.¹⁰

In seeking a waiver and extension of time of its five-year construction deadline for its U-block license, Southern argues that grant of its Waiver Request would provide relief from an inequitable and unduly burdensome obligation and that the Commission should not enforce the construction deadline because the 800 MHz band reconfiguration has presented a unique set of circumstances for Southern.¹¹ Southern states that it cannot currently construct any base stations using its U-block frequencies because these channels will be encumbered throughout the rebanding process.¹² Specifically, Southern asserts that its relocation agreement¹³ with Sprint Nextel allows site-based incumbent licensees (including Sprint Nextel and General Category licensees, including public safety licensees) to operate on the U-block frequencies until completion of the 800 MHz band reconfiguration, at which time Southern will receive

⁷ See Improving Public Safety Communications in the 800 MHz Band, *et al.*, WT Docket 02-55, *Notice of Proposed Rule Making*, 17 FCC Rcd 7169 (2002).

⁸ Improving Public Safety Communications in the 800 MHz Band, *et al.*, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, *et al.*, 19 FCC Rcd 14969 (2004) (*Rebanding Report and Order*).

⁹ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 205 (footnote omitted).

¹⁰ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 206 (citing 47 C.F.R. § 1.925). Pursuant to Section 1.3, the Commission may waive its rules if there is “good cause” to do so and if certain other criteria are satisfied. 47 C.F.R. § 1.3. See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990). In the context of 800 MHz Rebanding, the Commission defines “good cause basis” as a showing that the licensee would have constructed but for the fact that the band reconfiguration would affect its proposed facilities. *Rebanding Report and Order*, 19 FCC Rcd 15079 at ¶ 206.

¹¹ Waiver Request at 4.

¹² *Id.* at 2.

¹³ See *Rebanding Report and Order*, 19 FCC Rcd 15058, at ¶167.

replacement frequencies in the Enhanced SMR (ESMR) band.¹⁴ Southern states that it had equipment on hand and had identified sites to construct its U-block frequencies prior to its March 21, 2006 construction deadline, but could not construct because of the incumbency of Sprint Nextel and because of the 800 MHz rebanding proceeding.¹⁵ Furthermore, Southern reasons that because its U-block frequencies will be in continual use by site-specific incumbent licensees during the 800 MHz band reconfiguration, an extension of time to construct until it receives its replacement channels would not frustrate the Commission's goal of ensuring that the U-block frequencies associated with WPSA361 be used efficiently.¹⁶

We grant Southern's alternative Waiver Request because we find that Southern faces the situation that the Commission envisioned and provided for in the *Rebanding Report and Order*. Consistent with the guidance in the *Rebanding Report and Order*, we find that Southern has taken steps to be ready to construct its system by having equipment on hand and locations determined for the use of its U-block frequencies and is waiting for assignment of its new channels.¹⁷ Further, we find that requiring Southern to construct facilities prior to reconfiguration would not be in the public interest because it would result in the type of interference the Commission sought to resolve in the *Rebanding Report and Order*.¹⁸ Finally, we note that Southern's alternative Waiver Request is actually six months less time than what is prescribed in the *Rebanding Report and Order* for licensees that would cause interference using replacement channels (*i.e.*, Southern requests an extension only until the completion of rebanding in the NPSPAC regions that cover its U-block license and not an additional six months after such time).

For the reasons stated above, we find good cause to grant Southern its Waiver Request, pursuant to section 1.925 of the Commission's rules, and as outlined in the *Rebanding Report and Order* by extending the five-year construction deadline for license WPSA361. Specifically, we extend the five-year construction deadline until the completion of the 800 MHz band reconfiguration within all of the NPSPAC Regions covered by license WPSA361. This action is taken under delegated authority pursuant to section 4(i) of the Communications Act, as amended, and sections 0.331 and 1.925 of the Commission's rules.¹⁹

Sincerely,

Thomas P. Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁴ Waiver Request at 2-4.

¹⁵ See Supplemental Attachment filed October 19, 2006 (File No. 0002535203).

¹⁶ *Id.* at 3.

¹⁷ *Rebanding Report and Order*, 19 FCC Rcd at 15079 ¶ 205 (footnote omitted).

¹⁸ Southern states that its U-block frequencies will be in use until the end of the 800 MHz rebanding process and until such time, construction by Southern would cause interference to existing systems.

¹⁹ 47 U.S.C. § 154(i), 47 C.F.R. §§ 0.331, 1.925.